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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/474,043	12/28/1999	OOMMAN PAINUMOOTIL THOMAS	141509.00000	1780

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EXAMINER

WATKINS III, WILLIAM P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 01/13/2004

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/474,043

Applicant(s)

THOMAS ET AL.

Examiner

William P. Watkins III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

1. The 112 rejections of claims 57-64 are withdrawn in view of applicant's amendment of these claims.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this

Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 33-45, 52-57, and 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry (U.S. 4,414,970) in view of Palomo et al. (U.S. 5,938,874) and Wang (U.S. 5,939,464).

Berry teaches the use of an elastomeric film on a fabric substrate in a personal care article with one embodiment of the film being permeable and microporous (col. 2, lines 40-55). Palomo et al. teaches making breathable microporous films, which may be made of thermoplastic elastomers, by the use of foaming agents (abstract, col. 5, lines 50-65). Wang teaches foaming

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thermoplastic elastomers made of styrene block copolymers that have high levels of elongation up to 500% (abstract, col. 1, lines 30-65). The instant invention claims the use of a microporous permeable film on a fabric substrate where the film has been made by use of a blowing agent and may comprise styrenic tri-block polymers. It would have been obvious to one of ordinary skill in the art to have made the porous elastomeric films of Berry using blowing agents and styrenic block polymers because of the teachings of Palomo et al. and Wang that a blowing agent and these materials can be used to produce breathable porous elastomeric films. Berry also teaches the use of a nonwoven fabric in combination with the permeable film. A spunbonded nonwoven is instantly claimed. Spunbonding is a common method of forming nonwoven materials and would have been obvious to use by one of ordinary skill in the art. The processes of foaming of Wang and Palomo et al. use the same blowing agents and conditions as the process of the instant disclosure and are thus presumed to have a similar amount of open and closed cells as the instantly claimed product.

4. Claims 58-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry in view of Palomo et al. and Wang as

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applied to claims 33-45, 52-57 and 61-64 above, and further in view of Shah et al. (U.S. 5,786,412).

Berry in view of Palomo et al. and Wang teach an elastomeric microporous film on a substrate as noted above. Shah et al. teaches the use of polyurethanes to made elastomeric films as well as styrenic triblock polymers. The instant invention claims a polyurethane based elastomeric foam. It would have been obvious to one of ordinary skill in the art to substitute polyurethane for the styrenic components of Berry in view of Palomo et al. and Wang because of the teachings of Shah et al. that polyurethane makes a layer similar to that of styrene based elastomers. The examiner notes that Shah et al. calls for a 300% elongation without break (Table 2).

5. Claims 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry in view of Palomo et al. and Wang as applied to claims 33-45, 52-57 and 61-64 above, and further in view of Cheong (U.S. 5,571,529).

Cheong teaches the use of various topical medicinal substances in a foam layer that is in contact with skin (col. 3, lines 50-65). The instant invention claims the storage of and release of various active agents in a microporous elastomeric

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layer. It would have been obvious to one of ordinary skill in the art to have used a topical medicine or other active substance in the microporous bandage layer of Berry in view of Palomo et al. and Wang in order to deliver an active substance to a user's skin layer because of the teachings of Cheong.

6. The 102 rejections over Wang are withdrawn in view of applicant's arguments that Wang does not teach a breathable film. The examiner notes that while Wang does teach an open cell foam there is no explicit mention of the film being breathable or having the specific minimum WVTR that is used to define breathable in the instant specification at page 9.

7. Applicant's arguments filed 03 September 2003 have been fully considered but are not considered persuasive.

Regarding the 103 rejections, applicant argues that there is no motivation to combine the references because various references do not teach various of the claimed features. Applicant argues that Berry does not teach a 300% elongation at break, that Palomo et al. does not teach an elastic layer and that Wang does not teach a breathable film. The examiner does not rely on these references for these features. Berry teaches

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an elastic and permeable or breathable film, while Palomo et al. teaches foaming to make a breathable film and Wang teaches an elongation greater than 300% at break in a foamed film.

Applicant is engaging in a piecemeal attack on each reference and is not addressing the combination of the references as a whole.

Berry does not limit elongation to 100% but instead prefers an elongation of at least 100% (col. 7, lines 31-35). This does not teach away from combination with the material of Wang, which also has an elongation of at least 100%. There is motivation to combine the process of making a breathable permeable film taught by Palomo et al. with the Berry reference, which calls for a permeable film (col. 3, lines 44-50), as Palomo et al. supplies a specific way of making such a film using foaming. There is motivation to combine the material of Wang with Berry in view of Palomo et al. as Wang teaches a specific elastomeric foamed material, whose pore size and arrangement can form a breathable film in view of the teachings of Palomo et al. Berry and Palomo et al. teach surgical gowns and bandages which are both the same art area as the instant invention (see instant claim 56). Wang has common problem with the instant invention of materials used to make foamed elastomers.

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Regarding Shah et al. applicant argues that the reference does not teach an elastomer essentially free of polystyrene homopolymer. This is not found persuasive as Shah et al. teaches the use of KRATON block copolymers and polyurethanes and polyesters that have similar properties. Applicant uses KRATON polymers in the instant examples, thus little weight is given to applicant's arguments that the polymers of Shah et al. do not have the properties of the instant claimed materials. Applicant only argues that Cheung does not cure the deficiencies of the other cited references, which are dealt with above.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will

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expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.



WW/ww

January 9, 2004

WILLIAM P. WATKINS III
PRIMARY EXAMINER